No. 14,911

United States Court of Appeals

For the Ninth Circuit

BARBARA ARRAMONE, a minor, by and through her guardians ad litem, Dominick N. Arramone and Mary I. Arramone, *Appellant*, vs. JOHN A. PROWSE, as administrator of the Estate of Alvin Prowse, also known as Alvin I. Prowse, Deceased. *Appellee.*	}

Appeal from the United States District Court for the Northern District of California, Northern Division.

OPENING BRIEF OF APPELLANT BARBARA ARRAMONE.

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JURISDICTION.

Appellant sued for damages for personal injuries received in a vehicle collision on August 27, 1953, in California and her parents sued for medical expenses furnished by appellant, by action commenced in the District Court of the United States in and for the Northern District of California, Northern Division, on March 17, 1954 (pages 7 to 11 Clerk's Transcript), within the time allowed by law.

All parties plaintiff were citizens of the State of Illinois and all parties defendant were citizens of the State of California and the amount in controversy, as to each cause of action, exclusive of interest and costs, exceeded Three Thousand Dollars ($3,000.00) (pages 6 and 9 Clerk's Transcript). The jurisdiction of the District Court rested on 28 U.S.C.A., Section 1332.

Verdicts were rendered in favor of appellant for Six Thousand Dollars ($6,000.00) and in favor of her parents for Four Thousand Dollars ($4,000.00) and judgment was entered for Ten Thousand Dollars ($10,000.00) together with costs in the sum of Three Hundred Four Dollars and 99/100 ($304.99) (pages 13 to 15 Clerk's Transcript). After hearing of appellant's motion for a new trial an order denying plaintiff's motion for new trial was made and entered on July 12, 1955 (pages 16 and 17 Clerk's Transcript). Notice of appeal from this order was filed August 10, 1955 (page 18 Clerk's Transcript). The jurisdiction of this court is invoked under 28 U.S.C.A., Section 2106.

QUESTIONS PRESENTED.

The questions raised are: (1) Whether a jury's fail-
:e to award a plaintiff personal injury litigant ade-
ıate damages constitutes a ground for awarding the
.aintiff a new trial; and (2) Where the damages
varded a plaintiff personal injury litigant by a jury
:e grossly inadequate does the refusal of the court to
ward plaintiff a new trial amount to such an abuse
: discretion as to constitute error of law.

STATEMENT OF CASE.

On August 27, 1953 the appellant, Barbara
rramone, a minor, seventeen years of age, received
ıjuries resulting from the collision of an automobile
perated by Joseph R. Brunkala, in which appellant
as riding as a passenger, and a pick up truck owned
ıd operated by Alvin Prowse, also known as Alvin
. Prowse, deceased.

The collision occurred as the result of the negligence
f the said Alvin Prowse also known as Alvin I.
'rowse, and took place at the intersection of U.S.
Iighway 99 at California State Route 88, also known
s Waterloo Road, public highways in the County of
an Joaquin, State of California.

Subsequent to the collision, the aforesaid Alvin
'rowse, also known as Alvin I. Prowse died, and on
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pursuant to order of the Superior Court of the State of California in and for the County of Calaveras, in estate proceeding No. 2639.

On January 14, 1954, by order of the District Court of the United States, in and for the Northern District of California, Northern Division, in proceeding No. 7007, an order was made and entered appointing Dominick N. Arramone and Mary I. Arramone, appellant's parents, as guardians ad litem of appellant for the purpose of instituting suit against John A. Prowse, as administrator of the estate of Alvin Prowse, also known as Alvin I. Prowse, deceased, and other nominal defendants.

Thereafter a suit was commenced, being action No. 7007, in the District Court of the U.S. in and for the Northern District of California, Northern Division, by the appellant Barbara Arramone, a minor, by and through her guardians ad litem Dominick N. Arramone and Mary I. Arramone, as a plaintiff to recover damages for the injuries suffered by appellant as the result of the negligence of the said Alvin Prowse, also known as Alvin I. Prowse, deceased and said Dominick N. Arramone and Mary I. Arramone joined in said suit, individually, as parties plaintiff to recover damages incurred by themselves for hospital, medical, dental, x-rays, drugs and allied expenses furnished appellant in connection with the injuries sustained by her in said collision.

After trial of the issue, and on the 8th day of April, 1955, the jury returned a verdict in favor of the plain-

f and appellant Barbara Arramone and assessed
mages against the defendant John A. Prowse, as
ministrator of the estate of Alvin Prowse, also
iown as Alvin I. Prowse, deceased, in the sum of
,000.00 (page 13 Clerk's Transcript); the jury also
turned a verdict in favor of the plaintiffs Dominick
Arramone and Mary I. Arramone against the de-
ndant John A. Prowse, as administrator of the es-
te of Alvin Prowse, also known as Alvin I. Prowse,
ceased, in the sum of $4,000.00 (page 14 Clerk's
anscript).

On the 13th day of April, 1955 judgment was en-
red in favor of plaintiff and appellant Barbara Ar-
mone and the plaintiffs Dominick N. Arramone and
ary I. Arramone in the total sum of $10,000.00 to-
ther with costs in the sum of $304.99 (pages 14 and
Clerk's Transcript).

Subsequently, on the 14th day of April, 1955 plain-
fs filed their notice of motion for new trial as to
e plaintiff and appellant Barbara Arramone on the
llowing grounds: (1) that the verdict was against
e weight of the evidence; and (2) That inadequate
mages were awarded the plaintiff, Barbara Ar-
mone (page 16 Clerk's Transcript).

After argument of the motion for new trial the
onorable Sherrill Halbert, United States District
idge, on the 12th day of July, 1955 made and caused
be entered an Order Denying Plaintiffs' Motion for
New Trial (page 17 Clerk's Transcript).

That it is from the District Court's Order Denying Plaintiffs' Motion for a New Trial that this appeal was prosecuted pursuant to Notice of Appeal filed by plaintiff, Barbara Arramone, by and through her guardians ad litem, Dominick N. Arramone and Mary I. Arramone (page 18 Clerk's Transcript).

STATEMENT OF POINTS TO BE URGED.

Appellant's statement of points is set forth in the record (pages 21 and 22 Clerk's Transcript). Simply stated, appellant contends that the damages awarded her by the jury were grossly and patently inadequate and that the trial court's order denying her motion for a new trial amounted to such an abuse of discretion as to constitute error of law.

ARGUMENT.

INTRODUCTION AND SUMMARY.

I. THE DAMAGES AWARDED PLAINTIFF-APPELLANT, BARBARA ARRAMONE, BY THE JURY ARE INADEQUATE.

An examination of the record concerning the nature and extent of the injuries suffered by appellant can lead but to one conclusion and that is that the damages awarded to her by the jury's verdict in the sum of $6,000.00 are grossly inadequate.

This is made more apparent when it is observed that the damages awarded to her parents, Dominick N. Arramone and Mary I. Arramone, by the jury for

resent and prospective hospitalization, medical, den-
l and other allied expenses was in the sum of
,000.00, this being full payment for all actual
images.

That the nature and extent of the injuries suffered
 the appellant are as follows:

That on or about the 27th day of August, 1953, the
ppellant Barbara Arramone, a minor, was involved
 a vehicle accident near the environs of Stockton,
alifornia. That as a consequence of the accident her
ice and head were forceably thrust through the wind-
iield of the vehicle in which she was riding as a
issenger and she was thereby seriously injured, ren-
ered unconscious for a period of approximately two
ays, originally hospitalized in the San Joaquin Gen-
ral Hospital in Stockton, California for approxi-
ately 7 days, and in the St. Agnes Hospital in
resno, California for approximately 4 days (pages
, 31, 46, 47, 128, 185 and 191 Clerk's Transcript).

That as a result thereof appellant suffered multiple
evere facial lacerations leaving scars which are dis-
guring by all standards of measurement (page 72
lerk's Transcript).

That the scars involved the forehead, upper right
yelid, left frontal area of the head, nose, left side
f her face, lower right chin and lip and left side of
er face. That as of October 8, 1953, the scars varied
 length from a minimum of one inch to a maximum
f four and one-half inches, and varied in width from
ne-eighth of an inch to one inch (pages 30, 71, 75,
6 and 77 Clerk's Transcript).

That a picture portraying appellant's facial condition approximately six months prior to the collision was introduced into evidence as Exhibit 21 (page 44 Clerk's Transcript); that three pictures portraying appellant's facial condition subsequent to the collision were introduced into evidence as Plaintiff's Exhibits 23, 24 and 25 (page 46 Clerk's Transcript); that three additional photos portraying the nature of appellant's facial injuries were introduced into evidence as Plaintiff's Exhibits 39, 40 and 41 (pages 73 and 74 Clerk's Transcript).

That plastic surgery comprising excising of the old scars and wide undermining of adjacent tissue was performed to reduce the scars on October 19, 1954 at St. Luke's Hospital in Chicago; that the plastic surgery required the making of a total of 185 suture stitches with 6-0 nylon on the surface portions of the face, chin, head and nose, and two catgut sutures inside the nose and this latter surgery involved shortening of the nose; that the surgery required three hours to perform and involved five days hospitalization, from October 19, 1954 to October 23, 1954 (pages 77, 78, 79 and 80 Clerk's Transcript); that the scars show up more in cold weather and when appellant is fatigued (pages 63 and 64, Clerk's Transcript).

The examination as of October 12, 1953 revealed the loss of 4 teeth, including the upper left cuspid, upper left bicuspid, lower left central and lower left lateral and the cracking of two teeth including the right first bicuspid and lower right bicuspid; that 4 to 6 teeth adjacent to areas of the missing teeth were trauma-

zed; that the loss of the left upper cuspid and bi-
ıspid necessitated the crowning of the left lateral and
.e left second bicuspid teeth and bridging of the
wer left central and lateral teeth necessitated the
owning of the lower right central and lower left
ıspid teeth; that the fracture of the upper right
st bicuspid and the lower right bicuspid were par-
ally replaced by crowns; that all of the missing
eth were normal prior to the accident and all teeth
ere normal and in good condition eight months prior
 the accident; that a total of 41 treatments were
ndered appellant relative to replacement of the
issing teeth and repair of the damaged teeth (pages
, 89, 90, 94, 95, 96, 98 and 102 Clerk's Transcript).

That x-rays portraying the condition of appellant's
eth were introduced into evidence as Plaintiff's Ex-
bits Nos. 42, 42-a and 42-b (pages 92 and 93 Clerk's
ranscript).

That appellant suffered brain concussion resulting
. a post concussion syndrome manifested by symp-
ms of dizzy spells, blackouts, loss of power of con-
ntration, forgetfullness, fatigue, constant buzzing in
ırs, experiencing of bad odors, loss of weight, loss
 appetite and constantly increasing headaches
pages 59, 60, 62, 63, 117, 118, 120, 121, 186, 187 and
93 Clerk's Transcript); that the concussion suffered
 appellant amounted to an actual brain injury
pages 133 and 194, Clerk's Transcript).

That there was damage to the nerve supplying the
pper right eyelid from scarring or because it was
riginally damaged and then degenerated resulting in

a mechanical block which prevents closure of the eyelid in repose and sleep and results in irritation because of inability to blink the eyelid and keep the conjunctiva and cornea moist (pages 57, 80, 161 and 162 Clerk's Transcript).

That appellant suffered a chip fracture of the distal portion of the ulna bone of the left wrist leaving it very tender and painful especially on flexion which involved development of a nodule (pages 151, 154, 157 and 158, Clerk's Transcript).

That an x-ray portraying the chip fracture of the ulna bone was introduced into evidence as Plaintiff's Exhibit No. 43 (page 156 Clerk's Transcript).

That appellant suffered laceration of the right knee cap necessitating suture, and resulting development of scar tissue which makes the knee extremely painful on use or flexion (pages 50, 151 and 154 Clerk's Transcript).

That appellant suffered laceration of the right knee cap necessitating suture, and resulting development of scar tissue which makes the knee extremely painful on use or flexion (pages 50, 151 and 154 Clerk's Transcript).

That a picture portraying the injuries to appellant's knee was introduced into evidence as Plaintiff's Exhibit No. 22 (page 45 Clerk's Transcript).

That the laceration of the left cheek of appellant resulted in complete severance of the seventh nerve causing inability to smile, numbness on the left side of the face and a twitching or involuntary jerking

f the facial muscles (pages 29, 67, 118, 126, 152 and 30 Clerk's Transcript).

That appellant veers constantly to the right when alking and is lacking in balance and coordination, as weakness in muscle of left forearm and muscle hich rotates the head to left, with partial atrophy f muscle of left forearm (pages 61, 62, 123 and 124 lerk's Transcript).

That appellant has lost interest in social life and oesn't take an interest in very much of anything pages 53, 54, 59 and 118, Clerk's Transcript); that he suffered embarrassment, humiliation and anguish ue to her facial disfigurement (pages 54, 55, 133, 134, 52, 153, 187, 195 and 196 Clerk's Transcript); that he loves to sit in the dark by herself and pulls the indow shades down in the house during the day or ight, which tendency was getting worse at time of rial (pages 55 and 56 Clerk's Transcript); that although appellant was formerly a sound sleeper, she as become a restless sleeper and subject to having ightmares which condition has become worse with he passage of time (pages 58 and 63 Clerk's Transcript).

That appellant had psychic trauma and personality hange which has transformed her from a happy dispositioned girl to one who is nervous, irritable and moody, and who is subject to hallucinations, insomnia nd emotional instability (pages 116, 118, 119, 120, 21, 133, 134, 154, 162 and 163 Clerk's Transcript).

That appellant suffered injuries rendering her unable to breathe freely and involving olfactory nerve

damage (pages 58, 59, 118, 125 Clerk's Transcript); that appellant suffers ill health and has been rendered unable to perform many types of work and has lost social interests as well as interest in pursuing educational advancement (pages 51, 53, 61, 118, 119 and 203 Clerk's Transcript); that prior to the collision and sustaining of injuries appellant was a normal, friendly type of individual who enjoyed school, social activities, sports and church, and was not nervous, but studious and noncomplaining, who made good grades in school and was desirous of becoming a dental nurse (pages 53 and 116 Clerk's Transcript); that her normal weight was 116 to 117 pounds (page 59 Clerk's Transcript); that the most serious physical ailments with which appellant had been confronted prior to the collision, were colds, with the exception of one period of hospitalization for a tonsillectomy (pages 166 and 167 Clerk's Transcript).

That past and future plastic surgery cannot effect more than 75 per cent recovery or eliminate less than 25 per cent total cosmetic disability (page 80 Clerk's Transcript); that there will be permanent paralysis of the left facial nerve with resulting inability to smile; that there will be permanent inability to close the right eyelid (pages 80, 136 and 161 Clerk's Transcript); that reducing or crowning of teeth does not prolong, but shortens their lifespan (page 101 Clerk's Transcript); that there is permanent paralysis of the left facial muscle (page 128 Clerk's Transcript); that appellant will suffer emotional defects for the rest of her life or at least for many years (page 136

lerk's Transcript); that there is probable injury the brain which may be stationary or which may :ogress, concussion syndrome with blackout spells ıd possible deterioration which will not recede, which ay be stationary or may progress and get worse ›ages 136 and 137 Clerk's Transcript); that the orig- al psychic trauma will never be wiped out (page 140 erk's Transcript); that the headaches will be per- anent (page 164 Clerk's Transcript); that further astic surgery is deemed necessary to effect a greater ·gree of cosmetic recovery (pages 80, 81, 82, 83 and 3 Clerk's Transcript); that further psychic therapy indicated and if obtained it would require five to n years to stabilize appellant since the impact of e psychic trauma is more severe on a girl of 17 · 18 years of age than on an older person (pages 4, 135, 136 and 165, Clerk's Transcript); that rther treatment of the left wrist and right knee is dicated (page 163 Clerk's Transcript).

There is no substantial conflict in the evidence lative to the extent of the injuries suffered by ›pellant, Barbara Arramone. The only conflict in e evidence relates to the evaluation of certain of the eurological tests made by Drs. Walter Bromberg and arold C. Petzhold; the remainder of the medical ridence submitted in behalf of the appellant stands ıcontradicted.

In view of the discrepancy between the damages varded appellant's parents, and those awarded ap- ellant, it is obvious that the jury's verdict is so

inadequate an award that it must have been rendered under passion, prejudice or compromise.

In *Macias, et al. v. Western Union Telegraph Co., et al.,* 83 Federal Supplement 492, the United States District Court for the Southern District of California, Central Division, granted a new trial to plaintiffs, a minor child and parents, for inadequacy of damages for personal injuries where the jury had rendered a verdict in the sum of $1,000.00 for the injuries to the minor, and $150.00 to the parents for damages by way of expenditures.

The Court stated at page 494:

> "I need not speculate as to what was in the minds of the jurors in making this wholly inadequate award when, by their verdict for expenditures they showed that they believed the parents. Perhaps, as indicated at the hearing, they may have misunderstood the instructions as to the responsibility of the defendant for the action of its employee, Preston Williams, in parking an automobile on an incline without taking proper precautions to prevent it from rolling down the street and hitting the child. Or, perhaps, the jury misunderstood the instructions of the Court as to the elements to be considered in awarding general damages, especially for pain and suffering which, in a child, may be as keen as in an adult, despite the proverbial ability of children to overcome quickly mental and physical hurts."

I. THE COURT ERRED IN REFUSING TO GRANT A NEW TRIAL ON THE GROUND THAT THE DAMAGES AWARDED PLAINTIFF-APPELLANT, BARBARA ARRAMONE WERE INADEQUATE AS A MATTER OF LAW.

By way of prefacing this argument appellant wishes to call attention to the fact that the same rules are to be applied in determining whether damages awarded are inadequate or excessive.

As is pointed out in a recent and exhaustive annotation on adequacy of award in personal injury cases n 16 A.L.R. 2d 393 at pages 400 and 401,

> "It is now generally recognized, contrary to the earlier rule, that a plaintiff who has been awarded an inadequate verdict is as well entitled to relief as a defendant who suffers from one which is excessive."

This rule finds support in federal authority as early s 1896. See *Berry v. Lake Erie and W. R. Co.,* 72 Fed. 488 at page 489.

In *Virginia Ry. Co. v. Armentrout,* 166 Fed. 2d 400, Fourth Circuit Court of Appeals decision, plaintiff, minor, had suffered loss of his hands as well as portions of both of his arms and a jury returned verdict in the sum of $160,000.00 on the third trial of the matter. This verdict the trial Court refused o set aside as being excessive and one of the issues presented on review was as to whether or not there was an abuse of discretion in refusing to set aside he verdict as excessive. The Circuit Court so found, reversing the trial Court.

In holding that the trial Court had erred, the Circuit Court stated at page 407,

> "And quite apart from the error in the charge, we think the trial judge erred in refusing to set aside the verdict as excessive and grant a new trial. Ordinarily, of course, the amount of damages is for the jury, and whether a verdict should be set aside as excessive is a matter resting in this discretion of the trial judge. This, however, is not an arbitrary but a sound discretion, to be exercised in the light of the record in the case and within the limits prescribed by reason and experience; and where a verdict is so excessive that it cannot be justified by anything in the records or of which the court can take judicial notice, it is the duty of the judge to set it aside. Failure to do so is an abuse of discretion, analogous to error of law, and as such reviewable on appeal."

Commenting upon the power and duty of a trial judge to set aside a verdict under such circumstances the Court states at page 408,

> "The power and duty of the trial judge to set aside the verdict under such circumstances is well established, the exercise of the power being regarded as not in derogation of the right of trial by jury but one of the historic safeguards of that right. Smith v. Times Pub. Co., 178 Pa. 481, 36 A. 296, 35 L.R.A. 819; Bright v. Eynon, 1 Burr. 390; Mellin v. Taylor, 3 B.N.C. 109, 132 Eng. Reports 351. The matter was well put by Mr. Justice Mitchell, speaking for the Supreme Court of Pennsylvania in Smith v. Times Pub. Co., supra, 178 Pa. 481, 36 A. 298, as follows: 'The authority of the common pleas in the control and revision of excessive verdicts through the means of new trials was firmly settled in England before

the foundation of this colony, and has always existed here without challenge under any of our constitutions. It is a power to examine the whole case on the law and the evidence, with a view to securing a result, not merely legal, but also not manifestly against justice,—a power exercised in pursuance of a sound judicial discretion, *without which the jury system would be a capricious and intolerable tyranny,* which no people could long endure. This court has had occasion more than once recently to say that it was *a power the courts* ought to exercise unflinchingly'. (Italics supplied)

To the federal trial judge, the law gives ample power to see that justice is done in causes pending before him; and the responsibility attendant upon such power is his in full measure. While according due respect to the findings of the jury, he should not hesitate to set aside their verdict and grant a new trial in any case where the ends of justice so require. Aetna Casualty & Surety Co. v. Yeatts, 4 Cir., 122 F.2d 350.

(17) The power of this court to reverse the trial court for failure to exercise the power, where such failure, as here, amounts to an abuse of discretion, is likewise clear. It is true that under section 22 of the Judiciary Act of 1789, 28 U.S.C.A. §879, there may be no reversal on writ of error for any error in fact; and this rule has been frequently applied where reversal is sought because damages are excessive or inadequate. Fairmont Glass Works v. Cub Fork Coal Co., 287 U.S. 474, 53 S. Ct. 252, 77 L. Ed. 439. We do not understand the rule to have application, however, in those exceptional circumstances

> where the verdict is so manifestly without support in the evidence that failure to set it aside amounts to an abuse of discretion. In a situation of that sort, reversal is no more based on 'error in fact' than reversal for refusal to direct a verdict for insufficiency of evidence. Whether there has been an abuse of discretion is a question of law in the one case, just as is the legal sufficiency of the evidence in the other. An appellate court is not required to place the seal of its approval upon a judgment vitiated by an abuse of discretion."

In *Southern Pacific Co. v. Guthrie,* 186 Fed. 2d 926, a Ninth Circuit Court of Appeals decision, which was a rehearing of the same case reported in 180 Fed. 2d 295, plaintiff, a man of fifty-eight years, had suffered the cutting off of his right leg between the knee and hip and recovered a $100,000.00 verdict. The Court on rehearing limited its consideration to the issue of excessiveness and determined that they could not reverse the action of the District Court in denying a motion for new trial on excessiveness, the majority of the Court feeling the size of the verdict was not such as could be characterized as being grossly excessive or monstrous.

The Court did, however, put its seal of approval on the *Armentrout* case, supra, and clearly indicated that had it been able to characterize the particular award as grossly excessive it would have applied its own rule, previously established in *Department of Water and Power v. Anderson,* 95 Fed. 2d 577. See page 586 where the Court states:

"Appellant also contends that the verdict was excessive. Although it was held in Southern Ry. Co. v. Montgomery, 5 Cir., 46 F. 2d 990, 991, that a circuit court of appeals has 'no jurisdiction to correct a verdict because it is excessive', the rule in this Court is that the refusal to grant a new trial is 'such an abuse of discretion as is reviewable by this court' where the verdict is 'grossly excessive'."

What has been determined with respect to grossly cessive verdicts is just as applicable to grossly adequate verdicts, as previously discussed.

That the inadequacy of the award to appellant rein is so monstrous as to shock the conscience pears undebatable and if examined in the light of e nature and extent of her injuries, her past and ture pain, suffering and humiliation, the resistce of her residual physical and psychic injuries to erapy, the $6,000.00 awarded her pales into insigficance and can only exemplify an award which patently grossly inadequate.

What was said by the Court in the *Armentrout* se, supra, with respect to a common sense approach assessing damages with respect to whether one ffering deprivation of a member in infancy is likely feel the same sense of humiliation as one who stains the loss in later life, is certainly not plicable to appellant, for she had the greatest of isfortunes to suffer her injuries just as she was proaching the threshold of womanhood.

Appellant, too, was a minor of the age of seventeen ears when she sustained her injuries. She was, in

addition, at that age when the grotesque nature of her injuries were most physically and psychically overwhelming and excruciating. Furthermore, the residual aspects of her injuries, both physically and psychically, as clearly pointed out in the evidence, will remain with her for many years to come and as to certain particulars, for life.

The rule was stated in the *Macias* case, supra, at pages 492 to 493:

> "When a minor barely five years old is before the Court through his guardian ad litem, appointed by the Court, the responsibility of the Court as to the verdict is greater than in ordinary cases. It follows that the verdict of a jury in such a case calls for a greater scrutiny than the verdict against an adult. This also flows from the fact that in case of a settlement without trial, the settlement would have to be approved by the Court, and that the payment of attorney's fees out of any settlement or award would also be subject to the sanction of the Court. California Probate Code, sec. 1530a; In re Guardianship of Carlon, 1941, 43 Cal. App. 2d 204, 110 P. 2d 488."

In *Cunningham v. State,* 32 N.Y.S. 2d 275, which is comparable to the subject case, plaintiff, a nineteen year old college girl, suffered numerous serious injuries including permanent facial disfigurement and was awarded $25,000.00 damages and her father was awarded $5,000.00 for care and medical attention. On appeal, in *Cunningham v. State,* 34 N.Y.S. 2d 903, the Court determined that the damages allowed were inadequate to compensate such extensive injuries and raised the award to $40,000.00.

CONCLUSION.

Examined in the light of the foregoing authorities, s evident that the damages awarded appellant by jury were inadequate; that the damages awarded were in fact so grossly inadequate as to shock conscience; that the trial Court abused its discre- in refusing to grant her motion for a new trial that the trial Court's order refusing to grant ew trial amounts to error in law and the cause uld be remanded and a new trial ordered.

Dated, Fresno, California,
March 5, 1956.

Respectfully submitted,

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